

**United States District Court
FOR THE NORTHERN DISTRICT OF IOWA**

United States of America,

Plaintiff,

v.

Lavoris Sandifer,

Defendant.

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No. CR 96-2061

ORDER

The matter before the court is the defendant's petition to vacate, set aside or correct sentence under 28 U.S.C. § 2255 (Doc. No. 139) and the government's motion to dismiss the petition (Doc. No. 142). The matter has been fully briefed by both sides. The defendant alleges constitutionally ineffective assistance of counsel on numerous grounds. For the reasons set forth in the government's brief, I find that the defendant has failed to demonstrate prejudice as required to succeed on each challenge. Further, even if the defendant had alleged viable claims of ineffective assistance, relief would not be warranted because the defendant has not shown that there was a miscarriage of justice, as required under § 2255. United States v. Apfel, 97 F.3d 1074, 1076 (8th Cir. 1996) ("Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised for the first time on direct appeal *and, if uncorrected, would result in a complete miscarriage of justice.*") (emphasis added).

Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue only if a defendant has made a substantial showing of the denial of a constitutional right. Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003); Garrett v. United States, 211 F.3d 1075, 1076-77 (8th Cir. 2000). To make such a showing, the issues must be debatable among reasonable jurists such that a court could resolve the issues differently or that the issues

deserve further proceedings. Miller-El, 537 U.S. at 335-36; Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). The defendant has not met this standard and a certificate of appealability is denied.

Accordingly, IT IS ORDERED:

- 1) The Defendant's petition under 28 U.S.C. § 2255 is DENIED.
- 2) The government's motion to dismiss is GRANTED.
- 3) A certificate of appealability is DENIED.

Done and ordered this 6th day of Dec, 2005.



Michael J. Melloy

UNITED STATES CIRCUIT JUDGE

Sitting by Designation